
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 177

**The Marketing of Fruit Plant and Propagating
Material (Scotland) Regulations 2017**

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017 and come into force on 1st July 2017.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“accompanying document” has the meaning given in regulation 9(3);

“basic material” means propagating material which—

- (a) is intended for the production of certified material;
- (b) has been produced in a vegetative way from pre-basic material; and
- (c) has been officially certified as basic material;

“body corporate” includes a limited liability partnership;

“breeder’s reference” means the reference allocated to a breeder following an application for plant variety rights;

“CAC material” means *Conformitas Agraria Communitatis* material which—

- (a) in relation to propagating material and fruit plants produced in Scotland, is material and plants that meet the requirements for CAC material in schedule 3; and
- (b) in relation to propagating material and fruit plants produced outside Scotland, is material and plants that meet the requirements in Articles 23 to 27 of Commission Implementing [Directive 2014/98/EU](#);

“category”, in relation to plant material, means pre-basic material, basic material, certified material or CAC material;

“certified material” means—

(a) propagating material which—

- (i) is intended for the production of fruit plants;
- (ii) has been produced in a vegetative way from basic material or pre-basic material or, if intended to be used for the production of rootstocks, by certified seeds from basic or certified material of rootstocks; and

- (iii) has been officially certified; or
- (b) fruit plants which have been—
 - (i) produced directly from pre-basic material, basic material or certified material; and
 - (ii) officially certified;

“Council [Directive 2008/90/EC](#)” means Council [Directive 2008/90/EC](#) on the marketing of fruit plant propagating material and fruit plants intended for fruit production⁽¹⁾;

“Commission Implementing [Directive 2014/96/EU](#)” means Commission Implementing [Directive 2014/96/EU](#) on the requirements for the labelling, sealing and packaging of fruit plant propagating material and fruit plants intended for fruit production, falling within the scope of Council [Directive 2008/90/EC](#)⁽²⁾;

“Commission Implementing [Directive 2014/97/EU](#)” means Commission Implementing [Directive 2014/97/EU](#) implementing Council [Directive 2008/90/EC](#) as regards the registration of suppliers and of varieties and the common list of varieties⁽³⁾;

“Commission Implementing [Directive 2014/98/EU](#)” means Commission Implementing [Directive 2014/98/EU](#) implementing Council [Directive 2008/90/EC](#) as regards specific requirements for the genus and species of fruit plants referred to in Annex I thereto, specific requirements to be met by suppliers and detailed rules concerning official inspections⁽⁴⁾;

“[Directive 2001/18/EC](#)” means [Directive 2001/18/EC](#) of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms and repealing Council [Directive 90/220/EEC](#)⁽⁵⁾;

“fruit plants” means plants of the genera and species listed in schedule 1 and their hybrids which are intended to be planted or replanted, after marketing;

“genetically modified organism” has the meaning given in Article 2 of [Directive 2001/18/EC](#);

“inspector” means a person appointed by the Scottish Ministers under regulation 18;

“lot” means a number of units of a single commodity, identifiable by its homogeneity of composition and origin;

“marketing” means the sale, holding with a view to sale, offer for sale or any disposal, supply or transfer aimed at commercial exploitation of propagating material or fruit plants to third parties whether or not for consideration;

“official description” means the description of a variety provided on—

- (a) registration in respect of a registered variety; or
- (b) the grant of plant variety rights;

“official inspection” has the meaning given in paragraph 1 of schedule 2;

“official label”—

- (a) in the case of pre-basic material, basic material or certified material originating in Scotland, means a label issued or approved by the Scottish Ministers which has not previously been used and which meets the requirements of the relevant paragraphs of Part 1 of schedule 5;
- (b) in the case of pre-basic material, basic material or certified material originating elsewhere in the European Union, means a label issued or approved by the responsible official body

(1) OJ L 267, 8.10.2008, p.8, as last amended by Regulation (EU) No 652/2014 (OJ L 189, 27.6.2014, p.1).

(2) OJ L 298, 16.10.2014, p.12.

(3) OJ L 298, 16.10.2014, p.16.

(4) OJ L 298, 16.10.2014, p.22.

(5) OJ L 106, 17.4.2001, p.1, as last amended by Directive (EU) 2015/412 (OJ L 68, 13.3.2015, p.1).

and which meets the applicable requirements in relation to that material contained in Article 2 of Commission Implementing [Directive 2014/96/EU](#);

“officially certified”—

- (a) in the case of plant material originating in Scotland, means certified by the Scottish Ministers in accordance with the relevant provisions of schedule 2;
- (b) in the case of plant material originating elsewhere in the European Union, means certified for the purposes of Article 3 of Council [Directive 2008/90/EC](#) by the responsible official body;

“officially recognised description” means a description of the key morphological features that enable a variety which was marketed in the European Union prior to 30th September 2012 to be identified;

“plant material” means the plants and materials described in regulation 3(1);

“plant variety rights” means rights granted under Part 1 of the Plant Varieties Act 1997⁽⁶⁾ or under Council Regulation [\(EC\) No 2100/94](#) on Community plant variety rights⁽⁷⁾;

“pre-basic material” means propagating material which—

- (a) has been produced, according to generally accepted methods, for the maintenance of the identity of the variety including the relevant pomological characteristics and for the prevention of diseases;
- (b) is intended for the production of basic or certified material; and
- (c) has been officially certified as pre-basic material;

“propagating material” means seeds, parts of plants and all plant material, including rootstocks, intended for the propagation and production of fruit plants;

“registered variety” means a variety which is—

- (a) registered in Scotland accordance with schedule 4; or
- (b) in the case of varieties registered elsewhere in the European Union, a variety which is registered in accordance with Article 7(4) of Council [Directive 2008/90/EC](#);

“Regulation [\(EC\) No 1829/2003](#)” means Regulation [\(EC\) No 1829/2003](#) of the European Parliament and of the Council on genetically modified food and feed⁽⁸⁾;

“responsible official body” means in relation to functions imposed on a responsible official body under, or for the purposes of, Council [Directive 2008/90/EC](#)—

- (a) the Scottish Ministers, where those functions require to be performed in Scotland; or
- (b) an authority established or designated by the member State for the territory concerned, in accordance with Article 2(11) of Council [Directive 2008/90/EC](#), where those functions require to be performed outside Scotland;

“third country” means a country which is not a member State of the European Union;

“supplier” means a person who is involved professionally in the reproduction, production, preservation, treatment, importation or marketing of plant material;

“supplier’s document” means a document that meets the requirements of Part 2 of schedule 5;

“variety” means a plant grouping within a single botanical taxon of the lowest known rank, which can be—

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;

⁽⁶⁾ [1997 c.66](#).

⁽⁷⁾ OJ L 227, 1.9.1994, p.1, as last amended by Council Regulation [\(EC\) No 15/2008](#) (OJ L 8, 11.1.2008, p.2).

⁽⁸⁾ OJ L 268, 18.10.2003, p.1, as last amended by Regulation [\(EC\) No 298/2008](#) (OJ L 97, 9.4.2008, p.64).

- (b) distinguished from any other plant grouping by the expression of at least one of those characteristics; and
- (c) considered as an entity in view of its ability to be propagated unchanged; and

“working day” means a day which is not a Saturday, Sunday, a bank holiday in Scotland (as specified in section 1 and paragraph 2 of schedule 1 of the Banking and Financial Dealings Act 1971⁽⁹⁾) or other public holiday.

(2) Except in the context of accompanying documents, official labels and supplier’s documents, any reference to writing in these Regulations includes an electronic communication within the meaning of section 15(1) (general interpretation) of the Electronic Communications Act 2000⁽¹⁰⁾.

(3) Any other words or expressions used in these Regulations that are also used in Council Directive 2008/90/EC have the meaning they bear in that Directive.

Application of these Regulations

3.—(1) Subject to paragraph (2) and regulation 4, these Regulations apply in relation to the marketing in Scotland of—

- (a) fruit plants and propagating material of the genera and species listed in schedule 1 and their hybrids; and
- (b) parts of plants, including rootstocks, of other genera or species or their hybrids, if material from fruit plants listed in schedule 1 (or any hybrid of such fruit plants) is, or is to be, grafted on to them.

(2) These Regulations do not apply in relation to plant material intended for export from Scotland to a third country provided that the plant material is identified as such and kept sufficiently isolated.

Marketing of plant materials for trials etc.

4.—(1) These Regulations do not apply to the marketing of plant material in Scotland which is intended for any of the purposes listed in paragraph (2), provided that the marketing is in accordance with an authorisation granted by an inspector.

(2) The purposes referred to in paragraph (1) are—

- (a) trials or scientific purposes;
- (b) selection work; or
- (c) measures aimed at the conservation of genetic diversity.

(3) The authorisation referred to in paragraph (1)—

- (a) must be in writing;
- (b) may be amended, suspended or revoked by an inspector by notice; and
- (c) may be subject to such conditions as the inspector considers necessary.

⁽⁹⁾ 1971 c.80.

⁽¹⁰⁾ 2000 c.7, as amended by the Communications Act 2003 (c.21), section 406 and schedule 17, paragraph 158.

PART 2

Marketing of plant material

General requirements for marketing of plant material

- 5.—(1) No person may market plant material in Scotland unless—
- (a) in the case of propagating material, the plant material is—
 - (i) pre-basic material;
 - (ii) basic material;
 - (iii) certified material; or
 - (iv) CAC material;
 - (b) in the case of fruit plants, the plant material is—
 - (i) basic material;
 - (ii) certified material; or
 - (iii) CAC material;
 - (c) in the case of plant material which consists of a genetically modified organism, the organism has been authorised pursuant to [Directive 2001/18/EC](#) or Regulation [\(EC\) No 1829/2003](#);
 - (d) in the case of plant material the products of which are intended to be used as, or in, food within the scope of Article 3 of Regulation [\(EC\) No 1829/2003](#), or as, or in, feed within the scope of Article 15 of that Regulation, the food or feed concerned has been authorised pursuant to that Regulation;
 - (e) it is—
 - (i) of a variety which may be marketed under regulation 7(1) and is marketed with a reference to that variety in accordance with the relevant requirements of regulation 7(2); or
 - (ii) in the case of rootstocks which do not belong to a variety, marketed with a reference to the species or interspecific hybrid concerned;
 - (f) it is marketed in a sufficiently homogenous lot;
 - (g) subject to regulation 6(1), in the case of pre-basic material, basic material or certified material it is labelled, sealed and packaged in accordance with the relevant provisions of regulation 8 and schedule 5;
 - (h) subject to regulation 6(1), in the case of CAC material, it is accompanied by a supplier's document; and
 - (i) subject to regulation 6(3), the person is a supplier registered by the Scottish Ministers in accordance with regulation 10, or by another responsible official body, in relation to the plant material concerned.
- (2) The Scottish Ministers may, until 31st December 2018, authorise the marketing of plant material from any country outside the European Union if they are satisfied the plant material has been produced under conditions equivalent to the requirements for plant material in these Regulations.

Exemptions in relation to retail supply

- 6.—(1) Subject to compliance with paragraph (2), in relation to the retail supply to a non-professional final consumer of—

- (a) pre-basic material, basic material, and certified material, the requirements of regulation 5(1)(g) do not apply; and
 - (b) CAC material, the requirements of regulation 5(1)(h) do not apply.
- (2) The plant material mentioned in paragraph (1) must be accompanied by a document containing appropriate product information.
- (3) In relation to suppliers only involved in the marketing of plant material to non-professional final consumers, the requirements of regulation 5(1)(i) and regulation 15(4) do not apply.

Varieties which may be marketed

- 7.—(1) For the purpose of regulation 5(1)(e)(i), a variety may be marketed if it—
- (a) is subject to the grant of plant variety rights;
 - (b) is a registered variety;
 - (c) is the subject of an application—
 - (i) for plant variety rights; or
 - (ii) to be a registered variety;
 - (d) has been marketed in the European Union prior to 30th September 2012 and has an officially recognised description; or
 - (e) in relation to a variety having no intrinsic value for commercial crop production—
 - (i) has an officially recognised description; and
 - (ii) the plant material concerned is CAC material and this is identified on the accompanying label or document.
- (2) For the purpose of regulation 5(1)(e)(i)—
- (a) in the case of a variety which is the subject of an application for plant variety rights, the reference must be to the breeder's reference or to the proposed name of the variety;
 - (b) in the case of a registered variety, the reference must be to that registered variety; and
 - (c) in the case of a variety which is the subject of an application to be a registered variety, the reference must be to the breeder's reference or to the proposed name of the variety.
- (3) Schedule 4 on the registration of varieties has effect.

Labelling, sealing and packaging

- 8.—(1) For the purpose of regulation 5(1)(g), pre-basic material, basic material or, as the case may be, certified material must be labelled, sealed and packaged in accordance with this regulation and schedule 5.
- (2) Subject to paragraph (3), in relation to pre-basic material, basic material and certified material an official label must be affixed—
- (a) to the plant or part of a plant being marketed; or
 - (b) if it is marketed in a package, bundle or container, to that package, bundle or container.
- (3) Where a lot of pre-basic material, basic material or certified material is being marketed in the same package, bundle or container, a single official label may be affixed to that package, bundle or container.
- (4) An official label must be affixed in such a way that its removal would render it invalid.
- (5) Where pre-basic material, basic material or certified material is accompanied by a plant passport issued in accordance with Council [Directive 2000/29/EC](#) on protective measures against the

introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community⁽¹¹⁾, that plant passport may constitute the official label if it contains the information in paragraph 4 of schedule 5.

(6) A supplier may only market pre-basic material, basic material or certified material consisting of two or more lots of plants or parts of plants if those plants, or parts of plants, are in a package or container or form part of a bundle and—

- (a) in the case of a package or container, it is sealed in a way that prevents the package or container from being opened without damage to the closure; or
- (b) in the case of a bundle, it is tied in a way that prevents the plants or parts of plants from being separated without damage to the tie or ties.

Accompanying document

9.—(1) Without prejudice to the requirements of regulation 8, plant material which comprises lots of different varieties or different categories of plant material may be marketed with an accompanying document produced either by the Scottish Ministers or by the supplier of the plant material concerned (under the supervision of the Scottish Ministers).

(2) Where the information stated on the official label and the information stated on the accompanying document conflict, the conflicting information on the accompanying document must be disregarded.

(3) In this regulation an “accompanying document” means a document which complies with paragraph 8 of schedule 5.

PART 3

Suppliers

Registration of suppliers

10.—(1) An application for registration of a supplier must be made to the Scottish Ministers in writing and must contain—

- (a) the information listed in regulation 11(1); and
- (b) such other information as the Scottish Ministers may reasonably require.

(2) The Scottish Ministers must register a person involved professionally in the reproduction, production, preservation, treatment, importation or marketing of plant material if they are satisfied that the person will comply with the provisions of these Regulations and otherwise must refuse to register the person.

(3) The Scottish Ministers must notify the person of any decision to register, or to refuse to register, that person within a period of 15 working days beginning with the date on which the application was received by the Scottish Ministers.

(4) The Scottish Ministers must assign a registration number in relation to each person registered in accordance with this regulation.

(5) A person who, immediately before 30th September 2012, was accredited under regulation 6 of the Marketing of Fruit Plant Material Regulations 2010⁽¹²⁾ is to be treated as registered for the purposes of this regulation.

⁽¹¹⁾ OJ L 169, 10.7.2000, p.1, repealed subject to savings by Regulation (EU) 2016/2031 (OJ L 317, 23.11.2016, p.4).

⁽¹²⁾ S.I. 2010/2079. Regulation 6 ceased to have effect from 30th September 2012 by virtue of regulation 6(4) of S.I. 2010/2079. S.I. 2010/2079 is revoked and replaced by regulation 24 these Regulations.

(6) A person who is registered as a plant trader for the purposes of the Plant Health (Scotland) Order 2005(13) is to be treated as registered for the purposes of this regulation.

The register of suppliers

11.—(1) The Scottish Ministers must maintain a register of suppliers, including the following information—

- (a) the name, address and contact details of the supplier;
- (b) a list of all the activities mentioned in regulation 10(2) which are performed by the supplier in relation to plant material;
- (c) the address of the premises involved in those activities; and
- (d) a list of the main genera or species of plant material concerned.

(2) A supplier registered or applying for registration under regulation 10 must notify the Scottish Ministers of any change to the information referred to in paragraph (1).

Revocation of registration etc.

12.—(1) The Scottish Ministers must, by notice, revoke a registration if they are satisfied that the registered supplier no longer performs any of the activities which gave rise to the requirement for registration.

(2) Without prejudice to paragraph (1), the Scottish Ministers may by notice, amend, revoke or suspend a registration, if they are satisfied that—

- (a) any of the information held on the register is inaccurate; or
- (b) the supplier has failed to comply with any provision of these Regulations.

(3) Unless the Scottish Ministers otherwise direct in writing, an amendment, revocation or suspension under this regulation has immediate effect on service of the notice and continues in effect unless the registration is reinstated following an appeal under regulation 13.

Appeals

13.—(1) A person aggrieved by a decision of the Scottish Ministers either to refuse to register them under regulation 10(2) or to amend, revoke or suspend their registration under regulation 12 may appeal against the decision to a person appointed for the purpose of this regulation by the Scottish Ministers.

(2) The person appointed under paragraph (1) must consider the appeal and any representations made by the appellant or the Scottish Ministers and must recommend a course of action, in writing, to the Scottish Ministers.

(3) Following receipt of a recommendation mentioned in paragraph (2), the Scottish Ministers must make a final decision and notify the appellant in writing of that decision and the reasons for it within the period mentioned in paragraph (4).

(4) A decision under paragraph (3) must be notified within a period of 15 working days beginning with the date on which the recommendation mentioned in paragraph (2) was received by the Scottish Ministers.

Supplier's duties – identification and monitoring during production

14.—(1) During the production of plant material, a supplier must have in place a plan to identify and monitor critical points in the production process.

- (2) The plan must include details about—
 - (a) the location and number of plants;
 - (b) the timing of cultivation of the plants;
 - (c) propagating operations; and
 - (d) packaging, storage and transportation operations.

Supplier's duties – removal of non-compliant materials and notification of disease

15.—(1) Subject to paragraph (3), a supplier must, during production, remove any mother plant or propagating material (other than rootstocks not belonging to a variety) from the vicinity of any other mother plant or propagating material of the same category if—

- (a) in the case of a pre-basic mother plant or pre-basic material, the plant, or as the case may be, the material, does not meet any of the requirements set out in paragraphs 5(1)(b) and 7 to 12 of schedule 2;
- (b) in the case of a basic mother plant or basic material, the plant, or as the case may be, the material, does not meet any of the requirements mentioned in paragraph 15(1)(c) (as read with paragraph 15(2)), (d), (e) and (f) of schedule 2; or
- (c) in the case of a certified mother plant or certified material, the plant, or as the case may be, the material, does not meet any of the requirements mentioned in paragraph 21(1)(d) (as read with paragraph 21(2)), (e) and (f) of schedule 2.

(2) Subject to paragraph (3), a supplier must, during production, remove any mother plant or propagating material which is a rootstock not belonging to a variety from the vicinity of any other mother plant or propagating material of the same category if, in the case of a rootstock—

- (a) within the pre-basic category, the rootstock does not meet the requirements set out in paragraphs 8 to 12 of schedule 2;
 - (b) within the basic category, the rootstock does not meet the requirements mentioned in paragraphs 16(1)(b) (as read with paragraph 16(2)) and 18 to 20 of schedule 2; or
 - (c) within the certified category, the rootstock does not meet the requirements mentioned in paragraph 16(1)(b)(i) to (v) (as read with paragraph 16(2)) of schedule 2.
- (3) A supplier may, instead of removing the plant material mentioned in paragraph (1) or (2)—
- (a) take measures to ensure the requirements of the relevant provisions referred to in paragraph (1) or, as the case may be, (2) are met; or
 - (b) if the plant material complies with the conditions for marketing set out in these Regulations in respect of another category—
 - (i) seek official certification of the plant material within that other category; or
 - (ii) if the plant material complies with the conditions for marketing of CAC material, market it as CAC material.

(4) A supplier must notify the Scottish Ministers of the appearance on that supplier's premises of any organism listed in Table IA or II in schedule 6 or of the appearance of any organism at a level greater than the tolerance specified for such organism in Table IB in schedule 6.

(5) In this regulation, the terms “pre-basic mother plant”, “basic mother plant” and “certified mother plant” have the meanings given to them in paragraph 1 of schedule 2.

Supplier's duties – separation of plant materials

16.—(1) During growing, lifting or removal from parent material, a supplier must keep propagating material and fruit plants in separate lots.

- (2) A supplier must not mix propagating material which—
 - (a) fulfils the criteria for official certification within a certain category, with plant material of any other category; or
 - (b) is of one generation, with another generation of that propagating material.

Supplier’s duties - record keeping

- 17.—(1) A supplier must as soon as reasonably practicable make a record of—
- (a) all sales and purchases of plant material;
 - (b) all deliveries of plant material to and from the supplier’s premises; and
 - (c) the composition and origin of any plant material of different origins mixed by the supplier during packaging, storage, transportation or delivery.
- (2) A supplier must as soon as reasonably practicable make a record of—
- (a) all plant material being produced on the supplier’s premises;
 - (b) any occurrence on the supplier’s premises of any organisms or diseases referred to in Table IA, IB, II or III of schedule 6 and of any measures taken in relation to such an occurrence;
 - (c) all monitoring undertaken for the purposes of regulation 14; and
 - (d) all field inspections, sampling and testing conducted while the plant material is under the supplier’s control.
- (3) Any record under paragraph (1) or (2) must be kept while the plant material is in production and for a period of at least 3 years beginning from the point at which the plant material in question is removed or marketed.

PART 4

Enforcement and administration etc.

Inspectors

- 18.—(1) The Scottish Ministers must appoint inspectors for the purposes of enforcing these Regulations.
- (2) An inspector has the powers set out in schedule 8.

Notices

- 19.—(1) Any notice served under these Regulations must be in writing and may—
- (a) contain conditions; and
 - (b) be amended, suspended or revoked in writing at any time.
- (2) A notice may be served on a person by—
- (a) delivering it to that person;
 - (b) leaving it at that person’s proper address; or
 - (c) sending it by post or by electronic means to the person’s proper address.
- (3) In the case of a body corporate, a notice may be served on or given to an officer of that body.
- (4) In the case of a partnership, a notice may be served on or given to a partner or person having control or management of the partnership.

(5) In the case of an unincorporated association, a notice may be served on or given to an officer or a member of the governing body of the association or any other person having management responsibilities in respect of the association.

(6) For the purposes of this regulation and section 7 of the Interpretation Act 1978(14) (service of documents by post) in its application to this regulation, “proper address” means—

- (a) in the case of a body corporate or an officer of that body—
 - (i) the registered or principal office of that body; or
 - (ii) the email address of the officer;
- (b) in the case of a partnership or a partner or person having control or management of the partnership business—
 - (i) the principal office of the partnership; or
 - (ii) the email address of the partner or the person having that control or management;
- (c) in the case of an unincorporated association or an officer of the association—
 - (i) the principal office of the association; or
 - (ii) the email address of the officer;
- (d) in any other case, a person’s last known address or email address.

(7) For the purposes of paragraph (6), the principal office of a body corporate registered outside the United Kingdom or of a partnership established outside the United Kingdom is its principal office in the United Kingdom.

(8) If the name or address of any occupier of premises on whom a notice is to be served or given under these Regulations cannot, after reasonable inquiry, be ascertained, the notice may be served by leaving it conspicuously affixed to a building or object on the premises.

(9) A notice may specify that a person in receipt of it must immediately inform an inspector of its safe receipt.

(10) In this regulation—

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;

“officer”, in relation to a body corporate, means any director, manager, secretary or other similar officer of the body corporate; and

“partnership” includes a Scottish partnership, but does not include a limited liability partnership.

Offences and penalties

20.—(1) A person commits an offence if that person does not comply with—

- (a) an information notice served under paragraph 2 of schedule 8;
- (b) a movement notice served under paragraph 3 of schedule 8;
- (c) an enforcement notice served under paragraph 4(1)(a) of schedule 8; or
- (d) a prohibition notice served under paragraph 4(1)(b) of schedule 8.

(2) A person who commits an offence under these Regulations is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences by bodies corporate, Scottish partnerships and unincorporated associations

21.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association, commits an offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body; or
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner; and
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Arrangements for official measures

22.—(1) Subject to paragraph (2), the Scottish Ministers may make such arrangements as they consider necessary or desirable with any person (“A”) for the purpose of enabling A to carry out official measures on the Scottish Ministers’ behalf.

(2) The Scottish Ministers must not make any arrangement under paragraph (1) unless satisfied that A will not—

- (a) derive any private gain from any official measures that A is to carry out under the arrangement; or
- (b) carry out any official measures under the arrangement except under the supervision of the Scottish Ministers.

(3) The Scottish Ministers may include in any arrangement under paragraph (1) such conditions as they consider necessary or desirable for the purposes referred to in that paragraph and paragraph (2), including conditions—

- (a) specifying—
 - (i) the official measures that A must carry out;
 - (ii) the species of plant material in respect of which A may carry out the official measures;
 - (iii) the methods to be used in connection with the carrying out of the official measures by A;
 - (iv) the fees that A may charge in relation to the carrying out of the official measures by A;
 - (v) the records that A must keep in connection with the carrying out of the official measures by A;
- (b) prohibiting A from—

- (i) charging fees in relation to the official measures that A carries out under the arrangement except to the extent that these do not exceed the costs that A incurs in carrying them out;
 - (ii) carrying out the official measures except under the supervision of the Scottish Ministers;
- (c) prohibiting A from making any further arrangement with any other person (“B”) for any purpose in connection with the carrying out of the official measures that A has arranged with the Scottish Ministers under paragraph (1) to carry out, unless—
 - (i) the Scottish Ministers have approved the proposed conditions of the further arrangement and A has received the prior written approval of the Scottish Ministers to make the further arrangement;
 - (ii) the further arrangement includes a condition prohibiting B from making any subsequent arrangement for any purpose connected with the carrying out of the official measures in respect of which the Scottish Ministers made the arrangement under paragraph (1) with A;
 - (iii) the further arrangement includes an acknowledgment by A that the Scottish Ministers may vary, revoke or suspend the further arrangement if it appears to the Scottish Ministers that B is not complying, or has failed to comply, with any condition of the further arrangement; and
 - (iv) the further arrangement includes the conditions specified in sub-paragraphs (a) and (b) of this paragraph and for these purposes references in those sub-paragraphs to A are to be construed as references to B and references to “the arrangement” are to be construed as references to the further arrangement.
- (4) The Scottish Ministers must not approve the making of any further arrangement under (3)(c)(i) unless satisfied that B will not—
 - (a) derive any private gain from any official measures that B is to be authorised to carry out under the further arrangement; or
 - (b) carry out any official measures under the further arrangement except under the supervision of the Scottish Ministers.
- (5) The Scottish Ministers may, by giving notice to A or B (as the case may be), vary, suspend or revoke an arrangement under paragraph (1) or further arrangement under paragraph (3)(c)(i), or any conditions of an arrangement or further arrangement made under this regulation.
- (6) A notice given under paragraph (5) must specify—
 - (a) in the case of a variation or revocation, the date from which the variation or revocation takes effect;
 - (b) in the case of a suspension, the period during which the suspension has effect.
- (7) When a variation, revocation or suspension has effect, the Scottish Ministers may, for any purposes in relation to these Regulations, continue to have regard to such of the official measures carried out under an arrangement (or further arrangement) which was varied, revoked or suspended as appear to the Scottish Ministers to be official measures carried out in accordance with the provisions of these Regulations.
- (8) In this regulation, “official measures” include official inspections.

PART 5

General

Transitional provision

23.—(1) This regulation applies where plant material is produced from a parent plant existing before 1st July 2017.

(2) A supplier may until 31st December 2022 market the plant material mentioned in paragraph (1) provided—

- (a) the parent plant meets any certification or CAC material requirements relevant to it under the Marketing of Fruit Plant Material Regulations 2010⁽¹⁵⁾; and
- (b) the supplier's document accompanying it, or the official label affixed to it, includes a reference to Article 32 of Commission Implementing [Directive 2014/98/EU](#).

Revocation

24. The Marketing of Fruit Plant Material Regulations 2010 are revoked.

St Andrew's House,
Edinburgh
30th May 2017

FERGUS EWING
A member of the Scottish Government

(15) [S.I. 2010/2079](#).